1949.

File No. O. India Independence

Legal DEPARTMENT 49

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Subject:—

Opinions under the

Indian Independence Act, 1947

P-A/E

27/5

File No. O. India Independence/49

Std. Sectt. Slip 24 B e.

47-A

C O N T E N T S.

Legal Department File No. O. India Independence/49.

Sr. No.	Compilation No.	Subject.	Pages.
		Opinions under the Indian Independents Act, 1947.	
1.	R.I.No. 996 21/1/1949.	Complete merger of the integrated States.	1-4.
2.	R.I.No. 3905 16/3/1949.	Inter-Dominion Agreement regarding movement of evacuee property, and Government Stores and Vehicles from one Dominion to the other.	5-6.
3.	R.I.No. 8251 2/6/1949.	Reciprocal recognition of powers of attorney in the Dominions of India and Pakistan.	7-8.

JPE. 11/5/
& 5 copies

15/5

D.O.No. 2973/46-F
Political and Services Department.
Bombay Castle, 18th January 1949.

Subject:- Complete merger of the intergrated States.

(copy enclosed)

~~enclosed~~. I am to say that legislation has since been passed in the Constituent Assembly to enable the Governor-General to enlarge the areas and alter the bboundaries of the Provinces by including the intergrated states within their limits so as to make it possible for the Provincial Governments to administer them as part of the Provinces. As you are aware Government has already published in the Bombay Government Gazette of 13th January 1948 (Part-IVA) the draft of a Notifacation for the reconstitution and readjustment of districts by including the integrated states within the limits of the Bombay Province. It is proposed to finalize the new District set up after objections and suggestions that may be received from public in respect of the scheme up to 15th February 1949 , are considered by Government. The intention is to bring into effect the new set up with effect from the 15th of March 1949 (if possible) by which time the Government of India will have issued the necessary elargement and alteration of boundaries order in exercise of the powers conferred by the new legislation.

2. You will realise that the administration of the integrated states will take a new turn with effect from that date. The present anomalous position of administering them as spearate units and entities will vanish and they will become part and parcel of the Province in the real sense either as new districts or parts of the existing districts. Possibly a numer of departmental adjustments will be necessary while setting in motion the new set up. I am to request that you will therefore keep all the arrangements under the new set up, so afar as you are concerned, ready for implementation from the 15th of March 1949. Your proposals for additional establishment in view of the new district set up are separately under consideration and orders will be issued in due course.

Yours ~~x~~ sincerely,

(M.D.BHAT.)

To
All Chief Administrators by name).

No. 2973/46-E.
Political and Services Department.
Bombay Castle, 18th Janyary 1949.

Copy with a copy of the accompt. forwarded to all Departments of the Secretariat (except the Separate Department).

2. The Departments are requested to issue necessary instructions to the heads of the Departments under the new set up ready so far as they are concerned.

By order of the Governor of Bombay,

M.D.BHAT.

Chief Secretary to the Government of Bombay,
Political and Services Department.

JPE. 11/5/56.
4 copies.

Whereas it is expedient to amend the Government of India Act, 1935, for the purpose hereinafter appearing:-

It is hereby enacted as follows:-

1. (1) This Act may be called the Government of India (Amendment) Act, 1949. — Short title and commencement.

(2) It shall come into force on the 15th day of January, 1949.

2. The Interpretation Act, 1889, applies for the interpretation of this Act as it applies for the interpretation of an Act of Parliament. — Interpretation.

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Inseration of new Sections 290A and 290B.

6. After section 290 of the said Act, the following sections shall be inserted, namely:-

"290A. Administration of certain Acceding States as a Chief Commissioner's Province or as part of a Governor's or Chief Commissioner's Province.--

(1) Where full and exclusive authority, jurisdiction and powers for and in relation to the governance of any Indian State or of any group of such States are for the time being exercisable by the Dominion Government, the Governor-General may by Order direct-

(a) That the State or the group of States shall be administered in all respects as if the State or the group of States were a Chief Commissioner's Province; or

(b) that the State or the group of States shall be administered in all respects as if the State or the group of States formed part of a Governor's or a Chief Commissioner's Province specified in the Order:

Provided that if any Order made under clause (b) of this sub-section affects a Governor's Province, the Governor-General shall before making such Order, ascertain the views or the Government of that Province both with respect to the proposal to make the Order and with respect to the provisions to be inserted therein.

(2) Upon the issue of an Order under clause (a) of sub-section (1) of this section, all the provisions of this Act applicable to the Chief Commissioner's Province of Delhi shall apply to the State or the group of States in respect of which the Order is made.

(3) The Governor-General may in making an Order under sub-section (1) of this section give such supplemental, incidental and consequential directions (including directions as to representation in the Legislature) as he may deem necessary.

(4) In this section, reference to a State shall include reference to a part of a State.

290 B. Administration areas included within a Governor's Province or a Chief Commissioner's Province by an Acceding State. --(1) The Governor-General may by order direct that any area included within a Governor's Province or the whole or any part of the area included within a Chief Commissioner's Province shall be administered in all respects by a neighbouring Acceding State as if such area formed part of such State and thereupon the Provisions of this Act shall apply accordingly;

Provided that where any such Order is made with respect to

any area included within a Governor's Province, the Governor-General shall, before making such Order, ascertain the views of the Government of that Province both with respect to the proposal to make the Order and with respect to the Provisions to be inserted therein.

(2) An Order made under sub-section (1) of this section may contain such supplemental, incidently and consequential provisions (including provisions for varying the representation in the Legislature) as the Governor-General may deem necessary".

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JPE. 11/5/56.
4 copies.

Copy of an express letter from the Government of India, Office of the Chief Controller of Exports, (Ministry of Commerce), No. U/O.228-E. VII/49, dated the 12th February 1949.

Subject:- Inter-Dominion Afreement regarding movemxent of evacuee property and Government stores and Vehicles from one Dominion to the other.

Under the Agreement reached at the Inter-Dominion Conference held recently at Karachi, both the Dominions have agreed to exempt from the Export and Import restrictions as well as from Customs duty evacuee property and certain Government stores and vehicles moving from one Dominion to the other.

2. The Government of India have decided to give immediate effect to the Agreement and necessary instructions in this respect have been issued to the Customs and Cental Excise authorities by the Government of India, Ministry of Finance, (Revenue Division), vide their express letter No. 5(30)-Cus-III/48 dated the 20th January 1949. A copy of this letter together with a copy of Annexture A to the Inter-Dominion Agreement, specifying the goods exempted from Export, Import Control and Customs duty, is enclosed for information and guidance.

ANNEXURE 'A'.

AGREEMENT REGARDING CUSTOMS AND EXPORT AND IMPORT CONTROLS IN RESPECT OF EVACUEE PROPERTY AND GOVERNMENT STORES AND VEHICLES.

It is agreed that goods which are allowed to be moved by evacuees from one dominion to the other in pursuance of the arrangements arrived at between the two Dominions shall be exempt from export and import trade regulations as well as from export and import duties such goods will cover the following :-

(i) Goods carried in evacuee special trains;

(ii) Personal and household effects intednded for personal and household use, including articles like motor cars, cycles, gramophones, radios and radiograms, electrical goods, musical instruments, apparatus and equipment, cattle and other animals jewellery, currency notes, shares, bond securities, and licensed arms and ammunition. This exemption will cover accompanied as well as unaccompanied goods, provided that such goods shall be covered by a permit granted by an authority to be designated in this behalf by each Dominion;

(iii) goods carried by evacuees procedding by motor convoys straight from district camps in one Dominion to the other. This exemption will also cover vehicles forming such conveys; and

(iv) trade goods and merchandise including stock in trade belonging to an evacuee excluding gold and silver bullion provided that they are covered by permit granted by an authority to be designated in this behalf by each Dominion.

2. Evacuees travelling by evacuees special trains or road convoys should be made to declare whether they have with them any bullion. Searches should be restricted to suspicious cases and should be conducted by Customs officials only in the presence of a responsible officer.

3. It is agreed that military stores consigned by one Dominion

Government to the other, or carried by the M.E.O. or vehicles under the command of the M.E.O. whether carrying such stores or not, shall be exempt from export and import trade regulations as well as from export and import trade duties if any, on production of a certificate from the Ministry of Defence of the Dominionx from which they are being exported, or from an officer authorised by such Ministry in this behalf that they are such stores or vehicles:

4. It is agreed that all Government stores other than those covered by paragraph 3 above, e.g., Railway and P.&T. stores, allocated to each of the two Dominions as a result of partition shall be exempt from export and import trade regulations as well as from export and import duties if any, on production of a certificate from the Ministry concerned of the Dominions from which they are being exported, or from an officer authorised by such Ministry in this behaglf that they are such stores. This exemption will also cover vehicles carrying such stores.

5. It is agreed that all vehicles crossing the border if covered by Movement Orders issued by the Joint M.E.O. shall be exempt from export and import trade regulations as well as from export and import duties. This exemption does not apply to the goods carried in such vehicles.

6. It is agreed that all vehicles used by officers of either Dominion in the discharge of their duties and crossing the border shall be exmpt from ~~and~~ export and import trade regulations as well as from export and import duties on production of a certificate from the High Commissioner or the Deputy High Commissioner of the Dominion to which the officer belongs, or from an officer authorised by them in this behalf that the vehicles is so employed.

7. Subject to the conditions specified in paragraph 2 above, it is agreed that the Customs authorities will conduct a search on the border only in cases where the import or export of goods is, under the aforesaid provisions, required to be covered by a certificate or permit from an appropriate authority. No searches will, however, be undertaken in cases covered by paragraphs 3 and 4 above.

8. It is agreed that if, for any reason, any articles are detained by the Customs authorities, a receipt giving details of the articles detained shall furnished by these authorities to the owner of the articles.

9. It is agreed that ~~xfxxfarxanyxxreasxnaxxanyxarticlexaxare detainxd byxCustomsxxauthoritiesxxxxcxipxxgivingxdetailsxofxthexarticlesx detainedxxshall~~ adequate publicity should be given to the arrangement in both Dominions and machinery set up for receiving complaints of alleged violations and their vestigations.

No.R.19/4393-C.
Relief and Rehabilitation Department
Bombay Castle, 10th March 1949.

Forwarded with compliments for information to:-

The Commissioners of Divisions,
All Collectors,
All Departments of the Secretariat.
(Except the Separate Department).

By order of the Governor of Bombay.

Sd/- D.N.Pinge.
For Deputy Secretary to the Government of Bombay Relief and Rehabilitation Dept.

JPE. 11/5/56. 4 copies.

Copy of a letter from the Government of India, Ministry of External Affairs, No.F-63-14/48-Pak-II, dated the 8th April 1949:

Subject:- Reciprocal recognition of powers of attorney in the Dominions of India and Pakistan.

I am directed to say that the Government of India have had under consideration the question of recognition in India and Pakistank of powers of attorney executed in Pakistan & India respectively.

2. The Government of India are advised that under section 32 of the Indian Registration Act, 1908, a document to be registered under that Act should be presented for registration inter alia by the agent of some person executaking or claiming under the same, representative or assign, duly authorised by power-of--attorney exputed and authenticated in the manner mentioned in section 33--Section 33 inter alia provides that if the principal at the time of executing the power-of-attorney does not reside in the Province of India, a power-of-attorney executed before and authenticated by a Notary Public or any Court, Judge, Magistrate, British Consular Vice-Consul or representative of His Majesty or of the Central Government shall alone be recognised for the purposes of section 32 of the Act.

3. Under Section 85 of the Indian Evidence Act, 1872, the Court shall presume that every document purporting to be a power-of-attorney and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice Consul, or representative of His Majesty, or of the Central Government, was so executed and authenticated.

4. The Indian Registration Act, 1908 and the Indian Evidence Act, 1872 are "existing Indian Laws" under the Indian (Adaptation of Existing Indian laws) Order, 1947. Similarly these Acts are "existing Pakistan Laws" under the Pakistan(Adaptation of Existing Pakistan Laws) Order, 1947. As provided by these Orders these Acts (and a fortiori sections referred to above) continue as laws of the Provinces of India and Pakistan subject to adaptation contained therein.

5. Section 85 of the Indian Evidence Act, 1872, and Section 33 of the Indian Registration Act, 1908, mention among others "Notary Public", "any court, Judge or Magistrate" and the competent authorities to authenticate powers of attorney. The Government of India are advised that there is no reason to restrict the officers mentioned therein to those in the Provinces of India and that it should be competent for Notary Public or any Court, Judge, or Magistrate in Pakistan or other foreign countries to authenticate the powers of attprmey.

6. In view of the legal position explained above powers of attorney executed and authenticated in Pakistan Dominion in the manner prescribed in Section 85 of the Indian Evidence Act, 1872, or Section 33 of the Indian Registration Act, 1908, as adapted in Pakistan by the Pakistan (Adaptation of Existing Pakistan Laws) Order, 1947, should be accepted in the Province of India. I am therefore to request that, if the Provincial Government see no objection, the legal position explained above may kindly be communicated to Notaries public in their Province. The Courts may also be requested to afford necessary facilities to persons who wish to execute powers of attorney in India for use in Pakistan.

7. The Government of Pakistan have agreed with the legal position stated above and have issued similar instruction to the Provincial

Governments in relation in this regard."

No. 8500/6-B.
Home Department,
Bombay Castle, 30th May 1949

Copies forwarded with compliments, for information and guidance to:-

The Commissioners of Divisions,

All Collectors and District Magistrates, (with a request to bring
The Inspector General of Registration, (the legal position
The Chief Presidency Magistrate, (to the notice
(of their subordinate
(officers particularly
(those who are Notaries
(Public.

The Inspector General of Police, Province of Bombay,
All Deputy Inspectors General of Police,
All Superintendents of Police,
The Commissioner of Police, Bombay,
All Departments of the Secretariat, (except the Separate Department).

Sd/-

for Deputy Secretary to the Government of Bombay, Home Dept.

JPS. 11/5/56.
4 copies.